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Skunk, Inc, Jersey Boys Broadway LP*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONNA CORBELLO,

Plaintiff

v.

THOMAS GAETANO DEVITO et al.,

Defendants.

Case No. 2:08-cv-867-RCJ-PAL

**TO SEAL CERTAIN EXHIBITS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO
PLAINTIFF'S CLAIMS OF COPYRIGHT
INFRINGEMENT**

Pursuant to the *Stipulated Protective Order (Doc. 94)* and the Court's *Order Regarding Sealing Requirements ("Confidentiality Order," Doc. 95)*, Defendants Frankie Valli, Robert J. Gaudio, Marshall Brickman, Eric S. Elice, Des McAnuff, Dodger Theatricals, Ltd., JB Viva

Vegas LP, Getting Home, Inc., Skunk, Inc, Jersey Boys Broadway LP (collectively “Moving Defendants” or “New Defendants”) requests leave to file under seal certain exhibits to be filed in support of their Motion for Summary Judgment As To Plaintiff's Claims of Copyright Infringement ("Copyright MSJ").

POINTS & AUTHORITIES

I. INTRODUCTION

Moving Defendants request to file under seal the following exhibits supporting their Copyright MSJ:

- Copyright MSJ **Exhibit 1:** The Script of the musical play *Jersey Boys, The Story of Frankie Valli and the Four Seasons* ("Jersey Boys").
- Copyright MSJ **Exhibit 2:** The autobiography of Tommy DeVito at issue in the action ("the Work").
- Copyright MSJ **Exhibit 3**¹: A DVD copy of a Broadway performance of the *Jersey Boys* made available by the New York Public Library ("*Jersey Boys DVD*"). The parties obtained two copies of the DVD from the New York Public Library under very strict conditions and limitations. *See Exhibit A.*
- Copyright **MSJ Exhibit R-1:** Initial Expert Report of Doug Wright.
- Copyright **MSJ Exhibit R-4:** Rebuttal Expert Report of Doug Wright.
- Copyright **MSJ Exhibit R-2:** Initial Expert Report of Jeff Rovin.
- Copyright **MSJ Exhibit R-5:** Rebuttal Expert Report of Jeff Rovin.
- Copyright **MSJ Exhibit R-6:** Rebuttal Expert Report of Allen Peacock.
- Copyright **MSJ Exhibit R-3:** Initial Expert Report of Richard Krevolin.

¹ For the convenience of the Court and an orderly presentation of evidence, Moving Defendants are filing separate Appendices of Exhibits In Support of their Copyright MSJ.

II. ARGUMENT

A. Governing Law

The Ninth Circuit recognizes that courts have the power to allow for certain documents and information to be filed under seal in connection with dispositive motions. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). In which case, *Kamakana* requires a showing of "compelling reasons" sufficient to outweigh the public's interest in disclosures to justify sealing records. *Id.* at 1179. "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* at 1179. *See also Selling Source, LLC v. Red River Ventures, LLC*, 2011 WL 1630338, *6 (D. Nev. 2011).

1. There Are Compelling Reasons Justifying Sealing Of The *Jersey Boys* DVD

The public's interest in understanding the judicial process is outweighed by the possibility that disclosure of the *Jersey Boys* DVD could reasonably become a vehicle for improper purposes, such as unauthorized reproduction, distribution and viewing of the *Jersey Boys* DVD. Given the numerous internet video sharing sites like "YouTube.com," there is a very real concern that members of the public may abuse access to the *Jersey Boys* DVD for improper mass reproduction, distribution and viewing through such sites² or channels through which "pirated" copies of the *Jersey Boys* DVD may be distributed. The New York Public Library has articulated the following compelling reasons to seal the *Jersey Boys* DVD:

² The Court may take judicial notice that the "YouTube.com" is a popular video sharing internet web site. *See also Viacom Intern. Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514, 518 (S.D.N.Y. 2010)("YouTube... operates a website at <http://www.youtube.com> onto which users may upload video files free of charge. Uploaded files are copied and formatted by YouTube's computer systems, and then made available for viewing on YouTube. Presently, over 24 hours of new video-viewing time is uploaded to the YouTube website every minute.")

[T]he Library's ability to video record and preserve live theatrical performances is the result of years of delicate negotiations with interested unions, guilds, performing artists and organizations and other interested parties, and it is incumbent upon the Library to adhere strictly to the agreements and understandings we have reached with those parties, and to safeguard the level of trust and confidence we have built, with respect to such video recordings, including prohibitions against unauthorized reproduction and distribution.

See Exhibit 1, at p.1

Importantly, filing the *Jersey Boys DVD* under seal does not entirely deprive the interested public access to the *Jersey Boys DVD*. The *Jersey Boys DVD* is otherwise accessible to the interested public through the New York Public Library:

A copy of the [DVD] is and will continue to be accessible for viewing by interested parties, upon request, at The New York Public Library for the Performing Arts where it will be subject to the controlled handling by Library staff as required by contractual agreements to which the Library is a party and which relate to the use of the Video.

See Exhibit 1 at ¶4, p. 2.

The New York Library has requested that the DVDs issued to the parties be returned to the library at the conclusion of the Matter. *Id.* See also *Exhibit 2*.

2. The Jersey Boys Script

Protecting valuable economic rights which depend on confidentiality is a compelling reason justifying sealing records, which outweighs the public's presumptive right of access. *See Kamakana*, 447 F.3d at 1179 (protecting the economic interest arising from trade secrets justifies sealing court records); *Selling Source, LLC*, LLC 2011 WL 1630338 at *6 (sealing "business operations, customer agreements, corporate structure, the details of... customer base and how the company works with and licenses products to its customers and measures it takes to protect its intellectual property"). Given the success of the *Jersey Boys*, there are numerous and valuable subsidiary rights in the *Jersey Boys Script* which have not yet been exploited, and the value of

1 such rights depends on, among other things, the fact that a complete copy of the script has not
 2 been digitally and publically available.

3 Making the entire *Jersey Boys* Script publically and digitally available through the
 4 Court's PACER and ECF system greatly compromises the opportunity to exploit the various
 5 subsidiary rights and/or their value because the digital copy is can be easily, literally and quickly
 6 reproduced in its entirety and pirated. See e.g., <[http://www.abs-](http://www.abs-cbnnews.com/technology/01/15/10/digital-piracy-hits-e-book-industry)
 7 [cbnnews.com/technology/01/15/10/digital-piracy-hits-e-book-industry](http://www.abs-cbnnews.com/technology/01/15/10/digital-piracy-hits-e-book-industry)> ("Digital piracy, long
 8 confined to music and movies, is spreading to books. And as electronic reading devices such as
 9 Amazon's Kindle, the Sony Reader, Barnes & Noble's Nook, smartphones and Apple's much-
 10 anticipated "tablet" boost demand for e-books, experts say the problem may only get worse.").

11 3. The Work And The Expert Reports

12 The Moving Defendants requests to seal the Work (Copyright MSJ **Exhibit 1**) and the
 13 various expert reports (Copyright MSJ **Exhibits R-1 to R-6**) out of an abundance of caution
 14 because they reasonably believes that Plaintiff considers such the Work to be confidential and
 15 because the expert reports discuss the contents of the Work. If the Plaintiff does in fact consider
 16 the Work and such expert reports to be confidential, she may independently provide the Court
 17 with additional compelling reasons.

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1 **III. CONCLUSION**

2 The Court should grant Moving Defendants' motion to seal. As foregoing demonstrates,
3 Moving Defendants have made a particularized showing of harm and compelling reasons
4 justifying sealing the requested documents.

5
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16 *Gaudio, Marshall Brickman, Eric S. Elice, Des*
17 *McAnuff, Dodger Theatricals, Ltd.,*
18 *JB Viva Vegas LP, Getting Home, Inc., Skunk, Inc,*
19 *Jersey Boys Broadway LP*

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21 IT IS SO ORDERED

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24 ROBERT C. JONES

25 Dated: This 27th day of October, 2011